

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JULIE SUNDIN, individually,

Plaintiff,

v.

UNITED AIRLINES, INC., a Delaware
Corporation, conducting business in the
State of Washington; KENNETH A.
IROM, a resident of the State of
California,

Defendants.

CASE NO. C13-5692RBL

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS FOR IMPROPER VENUE

Plaintiff, Julie Sundin, was injured during the boarding process of a United Airlines plane in Denver, Colorado. While attempting to load his luggage into the overhead bin, Defendant Kenneth A. Irom dropped his bag onto Ms. Sundin's head. Ms. Sundin filed complaints in Colorado State Court and in the United States District Court in Western Washington. Her claims in both suits sound in negligence against Irom and United Airlines. Mr. Irom is a resident of California. United is a Delaware corporation doing business throughout the country.

Pursuant to 28 U.S.C. § 1391, if any one defendant is not a resident of the state in which the District sits, venue is only proper in a judicial district in which a substantial part of the events

1 or omissions giving rise to a claim occurred. The statute provides, in part, that a civil action may
2 be brought in:

- 3 (1) a judicial district in which any defendant resides, if all defendants are residents of
4 the State in which the district is located;
- 5 (2) a judicial district in which a substantial part of the events or omissions giving rise
6 to the claim occurred, or a substantial part of property that is subject to the action
7 is situated; or
- 8 (3) if there is no district in which an action may otherwise be brought as provided in
9 this section, any judicial district in which any defendant is subject to the court's
10 personal jurisdiction with respect to such action.

11 28 U.S.C. § 1391(b) (2011).

12 As stated, venue is only proper in a district in which any defendant resides if all
13 defendants are residents of the state in which the district is located. 28 U.S.C. § 1391(b)(1).
14 Accordingly, California would be a proper venue for this action because United Airlines is
15 domiciled in any judicial district in which it is subject to the Court's personal jurisdiction and
16 Mr. Irom is likewise a California resident.

17 If defendants reside in different states, venue is proper in the "judicial district in which a
18 substantial part of the events or omissions giving rise to the claim occurred" 28 U.S.C. §
19 1391(b)(2). Because the events giving rise to the claims occurred at the airport in Denver,
20 Colorado, venue is proper in Colorado.

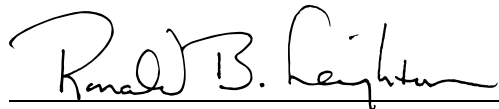
21 Plaintiff puts a clever twist on the "substantial part" qualifier in § 1391(b)(2) by arguing
22 that she purchased her ticket while in Washington and her status as a passenger gives rise to the
23 heightened duties of a common carrier. However, the duty only arises whenever and wherever
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1 Ms. Sundin begins her trip with United Airlines. The duty was breached by failing to properly
2 supervise the boarding process, and by negligently permitting an infirmed/frail and/or impaired
3 passenger, Mr. Irom, to attempt to load heavy luggage into the overhead compartment right
4 above Ms. Sundin. All of the elements of the claim occurred in Colorado.

5 Because venue is proper in Colorado or theoretically, California, the Court need not
6 apply 28 U.S.C. § 1391(b)(3). Only “if there is no district in which an action may otherwise be
7 provided in this section” is “any judicial district in which any defendant is subject to the Court’s
8 personal jurisdiction with respect to such action” a proper venue. 28 U.S.C. § 1391(b)(3).
9 Section 1391(b)(1) applies to the facts in this case. California is a proper venue. Section
10 1391(b)(2) also applies to the facts in this case. Colorado is a proper venue. Under any
11 applicable subpart of § 1391, Washington is not a proper venue for both United Airlines and
12 Kenneth A. Irom.

13 This motion to dismiss pursuant to Rule 12(b)(3) is brought in the name of both
14 defendants. Mr. Irom is not subject to the Court’s in personam jurisdiction and his motion [Dkt.
15 #12] is **GRANTED**. As for United Airlines, which does reside in Washington, it can object to
16 venue in its own name because of the nonresident status of a co-defendant. See, e.g., *Dyco*
17 *Petroleum Corp. v. Mesa Operating Co.*, 935 F. Supp. 1193, 1195 n.1 (N.D. Okla. 1996). United
18 Airline’s motion [Dkt. #10] is also **GRANTED**.

19 Dated this 20th day of November, 2013.

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22 RONALD B. LEIGHTON
23 UNITED STATES DISTRICT JUDGE
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